IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 30158 of 2006(M)

PETITIONER:

SAJI. S.U., WORK NO.1941,
INSTRUMENT MECHANIC, INSTRUMENT SECTION,
TRAVANCORE TITANIUM PRODUCTS LTD.,
THIRUVANANTHAPURAM.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.N.K.KARNIS

RESPONDENT:

TRAVANCORE TITANIUM PRODUCTS LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
THIRUVANANTHAPURAM-695 021.

BY ADV. SRI.B.S.KRISHNAN(SR.)SC,TRAV.TITANIUM
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 30158 OF 2006

Dated this the 15th December, 2006.

JUDGMENT

The petitioner who belongs to the category of Instrument Mechanic in the Instrument Section of Travancore Titanium Products Ltd. has filed this writ petition for a direction to the respondents not to terminate his services till 26.10.2009 upto which period he has applied for leave as per Ext.P1. He has sought for a writ of certiorari to quash Exts.P4 and P5.

2. According to the petitioner he got an offer for appointment abroad on application made with the permission of the superior officer and he had submitted the application for grant of leave without allowances for a period of three years from 27.10.2006 to 26.10.2009 to take up overseas employment. Ext.P1 is the copy of the application filed on 29.9.2006. Ext.P2 reads as follows:-

> "Leave without pay for employment abroad:-
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> The Company may grant leave without pay to the Officers for taking up overseas employment as follows:-
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> 1. a) Leave without pay for taking up foreign employment shall be granted to the Officers upto three years provided the Company can manage its affairs without having a substitute to be appointed from outside in the resultant vacancy.

b) The Officer shall proceed on leave only after the leave is duly sanctioned by the Board of Directors of the Company.

c) The leave can be extended beyond three years and upto 20 years with the prior approval of Government, provided, the person applying for leave can be allowed to continue on leave without appointing a substitute in his place and such granting of leave will not in any way affect the operations of the Company.

d) The Management will have discretion not to sanction leave or to sanction leave only for a shorter period and also to recall persons on leave before completion of the period of the sanctioned leave."

3. The respondent has put in the notice board Ext.P4 notice informing the employees that those working in the technical side will not be granted leave to take up employment abroad. In the light of the above policy decision taken by the respondent, application filed by the petitioner for leave was not considered favourably. Ext.P5 memo was issued to the petitioner on 30.10.2006 informing him that he is unauthorisedly absent from duty from 14.10.2006 and he shall offer his explanation. The petitioner submits that he had submitted Ext.P7 representation on 8.11.2006 stating that he is proceeding on leave from 9.11.2006 taking it for granted that Ext.P1 leave application has been sanctioned. Thereafter the petitioner has filed this writ petition stating that he apprehends proceedings against him and he has sought for

the above reliefs.

4. Standing counsel for the respondent submits that the petitioner has already gone abroad even before he got the leave applied for sanctioned. According to the respondent the petitioner cannot have any legitimate expectation that the leave applied for by him will be granted in the light of Ext.P4 notice and the relevant rules governing the sanction of leave. According to the respondent the conduct of the petitioner is such that the petitioner is not entitled to the reliefs prayed for.

5. Having considered the rival submissions, I am of the view that the stand taken by the respondent is reasonable in the facts and circumstances. Rule 10 of Ext.P2 Rules does not confer any right on any employee to avail leave as a matter of course. It is a settled principle of service jurisprudence that leave is not an absolute right and that a reasonable element of discretion is vested in the employer to grant or not to grant leave. The question is whether the discretion thus vested in the respondent has been exercised reasonably and fairly. As already stated by me above, the respondents have acted in terms of Exts.P2 and P4 and reasonably in the circumstances. When the institution which has given employment to the petitioner and is prepared to pay the

remuneration and grant due service benefits to him is in need of his services as a person working on the technical side, he cannot shirk that responsibility and go abroad without the permission of the employer.

6. It is true that the petitioner got a no objection certificate from his immediate superior to seek employment abroad. Though no objection certificate was issued in August 2006, the respondent after taking into consideration the over all circumstances had thought it necessary to inform all the employees, particularly those employed on the technical side, that they shall not apply for leave without allowances for taking up employment abroad. The petitioner submitted the leave application after Ext.P4 notice. Hence he cannot be heard to say that the employer had a duty to sanction the leave applied for. He cannot also be heard to say that he went abroad on the legitimate expectation that the leave applied for will be granted. The respondent is free to take appropriate action in accordance with law on the application for leave as also the alleged conduct of the petitioner in unauthorisedly absenting from duty on 14.10.2006 onwards and going abroad even before leave has been sanctioned to him. I am not inclined to exercise the discretionary jurisdiction under Art.226 of the Constitution of India in favour of the

petitioner for reasons aforesaid. Writ petition is dismissed.

K.K.DENESAN
Judge

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